IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTIETH DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 5749 of 1997

Between:

Annadi Linga Reddy S/o. Balramaiah,

Aged 53 years, occ: Agriculture,
R/o. Regadimaddikunta (V), Sultanabad (M),

Karimnagar District.

..... PETITIONER

AND

1 The District Collector,
Karimnagar.
2 The Special Collector, Sri Ramsagar Project
Tarnaka, Hyderabad.
3 The Superintendent Engineer,
I & CAD, O & M Circle-II, Dhanoor Camp, Jagtial, Division,
Karimnagar.
4 The Executive Engineer,
I & CAD, O&M Division No.3 Of O&M Circle--2,
Peddakalwala Camp, Peddapally, Karimnagar.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction more particularly one in the nature of Writ of Mandamus by declaring the impugned action of the respondents herein in not paying the compensation under A.P. Irrigation, Utilisation & CAD Act or any other law in Survey No. 785 to an extent of 0.20 guntas situated at Regadimaddikunta Village, Sultanbad Mandal of Karimnagar Dist even after taken possession of the said land belongs to the petitioner as illegal, void and ab initio and may be further directed to the Respondents herein to pay compensation as per the A.P.I.U. & CAD Act or under the Land Acquisition Act in the interest of justice and equity.

Counsel for the petitioner : Mr.Aswini Kumar, Advocate representing
Sri Y.Rama Rao, Advocate

Counsel for respondents : G.P. for Irrigation & Command Area Development, G.P. for Land Acquisition.

The Court made the following :

ORDER:

Annadi Linga Reddy, writ petitioner herein, filed the present Writ Petition praying for a writ, order or direction more particularly one in the nature of mandamus declaring the impugned action of respondents in not paying compensation under A.P. Irrigation Utilisation and Command Area Development Act, 1984, hereinafter referred to as “Act” for the purpose of convenience, or under any other law, relating to S.No.785 to an extent of 20 guntas situated at Regadimaddikunta village, Sultanabad Mandal of Karimnagar District even after taking possession of the said land belonging to him as illegal, void and ab initio and further direct the respondents to pay

compensation as per the Act or under the Land Acquisition Act, 1894 in the interest of justice and equity and to pass such other suitable orders.

Sri Aswini Kumar, Counsel representing Sri Y.Rama Rao, the learned Counsel for the writ petitioner, had drawn the attention of this Court to Sections 13 and 17 of the Act and also the Scheme and object of the Act and would contend that in view of the specific admission made relating to acquisition of 9 guntas of land in the aforesaid Survey Number by the respondents in the counter affidavit, on the ground of non-raising of objections or non-filing of objections the writ petitioner cannot be deprived of the compensation amount since it would be highly unjust and unsustainable. The learned Counsel also had drawn the attention of this Court to an order passed by the Division Bench of this Court where a similar question was raised and decided in W.P.No.6165/88 dated 31-12-1996. The learned Counsel ultimately would conclude that at any rate, having utilized the property of a citizen and having deprived a citizen of the property, the State is not justified in taking such a stand that the State need not pay compensation on the ground of non-filing of objections and on such a technical ground, the just relief prayed for by the writ petitioner cannot be negatived.

Per contra, the learned Government Pleader for Irrigation and Command Area Development and the learned Government Pleader

for Land Acquisition had taken this Court through the counter affidavit and would submit that in the light of the stand taken in the counter affidavit and also in the light of the provisions of the Act referred to supra, the writ petitioner is not entitled to any compensation.

Heard both the Counsel.

The petitioner is the owner, possessor and pattadar of land bearing S.No.785 and the respondents had acquired an extent of 20 guntas of land belonging to him from the said Survey Number for construction of Diver Pipe 416 ft. length, 75 ft. width and 8 ft. cutting (deep) in the said land beginning from the main canal and hence the said canal had become distributory channel from the main canal in DP4 in D/86 in the village limits of Regadimaddikunta. At present the canal is being utilized for the purpose of 150 acres in surrounding and the respondents had taken possession of the land without payment of any compensation and hence the same is contrary to the Act referred to supra. It is further stated that writ petitioner requested the respondents in general and the 3rd respondent in particular by filing representation to pay compensation to his land and the petitioner also issued a legal notice through his Advocate to the 3rd respondent stating all the facts and circumstances on 12-6-1989 and the 3rd respondent had given a reply that the field channel for D.P.No.4 in D/86 in the village limits of Regadimaddikunta village,

Sulthanabad Mandal is excavated without objections from the ryots and therefore no compensation need be paid under sub-section (1) of Section 17 of the Act. It is also further stated that a similar question came up for consideration in W.P.No.6165/88 before this Court and the Division Bench of this Court by the order dated 3-9-1996 disposed of the same directing the District Collector to pay compensation with interest @ 12% per annum from the date of possession till the realization of the amount.

The respondents filed counter affidavit wherein specific stand was taken that on verification of records it is found that the then Executive Engineer, Distributory Division No.3, L.M.D. Colony had not sent the requisition treating DP4 @ 28.46 of D/86 as field channel and replied that no land compensation is to be paid for the lands in which a field channel is excavated without the objection of the concerned persons at the time of execution under Section 13 of the Act. It is a fact that channels of DP4 of D/86 is passing through S.No.785 situate in siwar of Regadi Maddikunta village, Sultanabad Mandal, Karimnagar District and the channel is covering an area of 9 guntas only. It is further stated that in S.No.785 an extent of 9 guntas is covered by the Field Channel and no objections had been received from the concerned person at the time of execution of the canal and the petitioner had failed to file objections within 15 days of publication of the Scheme as per the Act and the case referred to in

W.P.No.6165/88 stands on a different footing. It was also further specifically stated that on inspection the area excavated in DP4 of D/86 in S.No.785 had been worked out to 9 guntas. It is further stated that DP4 of D/86 is a Field Channel based on the fact that it is serving directly the fields and as such no compensation need be paid under Section 17(1) of the Act.

No doubt relating to the extent of land which had been disturbed or taken possession by the respondents for the purpose referred to supra, there is slight controversy. Be that as it may, the fact remains that there is admission that on survey an extent of 9 guntas had been detected as having been utilized by the respondents for the purpose of the channel specified supra. The Act, Act 15 of 1984, is an Act to provide for an accelerated increase in agriculture and allied production in the State of Andhra Pradesh through a programme of comprehensive and systematic development on scientific and modern lines of command areas, comprising measures for optimum use of lands and water, prevention of land erosion and water logging, improvement of soil fertility and regulation of cropping pattern, and for proper maintenance and upkeep of irrigation systems in the State for ensuring maximum benefits to the cultivators under the command areas and for the matters connected therewith. Section 13 of the Act dealing with **Construction of field channels** reads as hereunder :

1. Whenever it appears to the Government that the

construction of field channels is expedient for the supply of water to the lands immediately after or simultaneously with the authority of water in the main irrigation system, the Government may, by notification, declare the command area under an irrigation system, or project or source for the purpose of applying the provisions of this section.

2. On the issue of the notification, the Land Development Officer shall have power to enter upon any land and make survey of such land to determine the most suitable alignment for the field channel so as to convey water to every land under a pipe outlet and mark out the land which, in his opinion, is necessary for the construction of the field channel.

3. The Land Development Officer shall thereupon publish a scheme in the prescribed manner giving details of the lands through which the field channel is proposed to be taken and specifying the areas and the names of persons likely to be affected.

4. Every person likely the affected may submit a petition to the Land Development Officer stating his objections, if any, to the proposed construction of the field channel within fifteen days of publication of the scheme. The Land Development Officer shall finalise the scheme after considering the objections, if any, and publish it in the manner prescribed. An appeal against an order of the Land Development Officer may be filed before the District Collector within fifteen days of the publication of the scheme.

5. The Land Development Officer shall, after the expiry of the period of appeal, or where an appeal is filed before the District Collector, subject to the result of the appeal, cause the field channel to be constructed so as to convey water to every land under a pipe outlet.

6. Notwithstanding anything in the Land Acquisition Act

1894, it shall be lawful for the Land Development Officer to enter upon lands required for the construction of field channel and to cause construction of the field channel as if a declaration had been made by the State Government for the acquisition thereof under Section 6 of that Act and as if the State Government had thereupon directed the Collector to take order for the acquisition of such land under Section 7 of the said Act and as if the State Government had issued orders for immediate possession being taken under Section 17 of the said Act.

7. The Land Development Officer shall, after the construction of the field channel, fix the boundary marks in the prescribed manner and thereupon the ownership of such land shall vest in the Government.

8. When the land through which the field channel passes, is not benefited therefrom, the owner of such land shall be paid an amount calculated at the rate at which the land required for construction of field channel at the nearest point from which the pipe outlet has been taken, has been acquired.

Provided that where question arises as to whether the amount payable under this sub-section corresponds to the market value of the land, it shall be referred to the District Collector, whose decision thereon shall be final.

9. Notwithstanding that the cost of construction of the field channel is met by the Government, the responsibility for maintenance of the field channel shall vest with the pipe committee, and the beneficiaries of the field channel shall not acquire any right other than that of user only.

(10) Any person, resisting the exercise of the powers, or having control over the property fails to give all facilities for their being exercised, shall be deemed to have committed an offence under Section 188 of the Indian Penal Code, 1860.

Section 14 of the Act dealing with **Power to enter and survey etc.,**

reads as hereunder :

(1) The Land Development Officer, or any person authorized by him in this behalf may,-

a. enter upon any land in the command area of an irrigation system or land adjacent thereto and undertake survey or take levels thereon for preparing a scheme for systematic land development.

b. dig and bore into top-soil or sub-soil and collect soil samples for technical investigation;

c. make and set up suitable land marks, and level marks for the said purpose.

d. do all other acts necessary for the proper conduct of any inquiry or investigation relating to any existing or proposed scheme for comprehensive command area development;

e. enter upon any land or building and cut down and clear away jungle, fence or any part of standing crop, or other obstruction for the purpose of regulation of the use of water supplied or inspection or measurement of the lands irrigated thereby and of doing all things necessary for the proper regulation and management of land and water:

Provided that if the Land development Officer or other person authorized, proposes to enter into any building or any enclosed courtyard attached to a dwelling house, he shall give the occupier of such building or courtyard at least a day's notice in writing of his intention to do so, if the occupier denies entry on oral request.

(2) Save as otherwise provided by the rules made in this behalf, no person shall be entitled to any compensation for loss or damage sustained by him by reason of any action taken by the Land Development Officer or other person authorized in pursuance of his powers under this section.

Section 15 of the Act dealing with **Preparation of scheme for systematic land development** reads as hereunder :

1. The Land Development Officer shall, as soon as may be after the issue of notification under Section 12, hold a meeting of landholders in the unit and after hearing their views, cause the preparation of a suitable scheme for systematic land development.

2. Any scheme so prepared shall amongst other matters, set out the estimated cost of the scheme, a sketch plan of the area proposed to be converted under the scheme and the particulars of the site of the pipe outlet re-alignment of the existing irrigation system, survey numbers covered, field boundaries as existing and as proposed, the extent required for the irrigation system and the landholders to be benefited and other persons affected thereby.

3. Every scheme shall, immediately after its preparation, be published in such form and manner as may be prescribed inviting objections and suggestions with respect thereof within fifteen days of such publication.

4. The Land Development Officer shall consider the objections and suggestions received, if any, from the landholders and finalise the scheme either as originally proposed by him or with such modifications as he may consider fit and publish the scheme as finalized in such form and manner as may be prescribed (hereinafter in this chapter referred to as the approved scheme).

Section 17 of the Act dealing with **Acquisition of land for irrigation system under a pipe outlet** reads as hereunder :

(1) Notwithstanding anything to the contrary in any law for the time being in force, it shall be lawful for the land-holders under a pipe outlet to agree -

i. to establish an irrigation system on their lands without payment of compensation for the land occupied by such a system; or

ii. to bear a cut in their holdings in proportion to the extent of their holdings in lieu of the amount fixed for the land occupied by the irrigation system, by readjustment of field boundaries.

(2) Where the land holders under a pipe outlet do not so agree to part with their lands required for the irrigation system without payment in cash, the Land Development Officer may fix the amount payable for such lands, in the same manner as provided in sub-section (8) of Section 13, and the amount so fixed shall form part of the estimated cost of the approved scheme and be paid to the affected landholders according to the area occupied by the irrigation system.

(3) Any person aggrieved by the amount fixed by the Land Development Officer under sub-section (2) may prefer an appeal within fifteen days from the date of communication of an order in that behalf, to the District Collector. A second appeal against an order of the District Collector may be filed before the Commissioner within fifteen days from the date of such order.

The main objection raised in the counter affidavit is that inasmuch as objections had not been preferred within the specified time, the writ petitioner is not entitled to claim any compensation at all under the provisions of the Act. It is a case of deprivation of the property of a citizen. No doubt, right to property is no longer a fundamental right but definitely it is an enforceable legal right. Article 300-A of the Constitution of India reads as hereunder :

"No person shall be deprived of his property save by authority of law."

On a careful scrutiny of the decision of the Division Bench of this Court in W.P.No.6165/88, dated 31-12-1996, similar contention which had been advanced in this Writ Petition also, did not find favour and ultimately the Writ Petition was disposed of with certain directions. In the light of the decision of the Division Bench of this Court in W.P.No.6165/88 dated 31-12-1996, the present Writ Petition is disposed of with the following direction:

The 3rd respondent is directed to submit proposals to the 1st respondent relating to the land which had been taken possession and the particulars relating thereto referred to supra within a period of one month from the date of receipt of this order and the 1st respondent-District Collector, Karimnagar shall consider such proposals forwarded to him in this regard and hold necessary enquiry if he deems necessary to do so in this regard and fix the market value of the 9 guntas of land in S.No.785 situate in Regadimaddikunta village, Sultanabad Mandal, Karimnagar District within a period of three months thereafter and pay such amount fixed by way of compensation with interest @ 12% per annum on such amount which may be fixed from the date of taking possession of the land by the respondents.

The Writ Petition is accordingly disposed of. No order as to costs.

P.S.Narayana.,J

Date : -1-2005

L.R. copy to be marked : YES / No

AM

ASSISTANT REGISTRAR

To:

One fair copy to the Hon'ble Mr.Justice P.S. Narayana (For his Lordship's kind perusal)

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Karimnagar.
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